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Matt Blunt
Secretary of State

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the web site at <http://www.sos.state.mo.us/adrules/pubsched.asp>

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

The rules are divided in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.



FROM THIS ANGLE

New Website!

Good news!! You will want to change your bookmarks in your favorites section to reflect our new website address. The website for the Secretary of State's Office has been redesigned and represents countless hours of work by many members of our organization. We are very excited about our new site and believe you will be too. The new address is: <http://www.sos.state.mo.us>. On the home page under the blue box labeled "Popular" you will find *Code of State Regulations* and *Missouri Register*. That link will take you to Administrative Rules' home page where you will find other added features.

Rulemaking Manual Now Online!

"*Rulemaking 1-2-3, Missouri Style*", which is essentially a "how-to" manual for the rulemaking process, is now available on our new website. We believe this will be especially useful to those agencies that did not receive sufficient copies of the manual when we presented the same.

Downloadable, Fillable Forms

In an effort to provide better customer service to you, our customers, you will also now find downloadable, fillable forms to assist you in preparing your rulemaking packet. We feel this is a service we can provide you to assist in preparing all of the requisite paperwork required for properly filing your rulemakings.

Survey coming

In the upcoming months we will be sending out a survey to receive your input on how we may better serve you, what we can do to assist you in making the rulemaking process as "painless" as possible, and what constructive suggestions you may have concerning our process, etc. Please

take the time to complete the survey and return the same to our office. This is a very important product for us to be aware of your concerns, problems, complaints — or even compliments!

As always, if there is a specific question or problem that you would like to discuss with our staff, please feel free to call.

A handwritten signature in cursive script, appearing to read "Lynne".

Lynne C. Angle

Director, Administrative Rules

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 10—Director, Department of Mental Health Chapter 5—General Program Procedures

EMERGENCY AMENDMENT

9 CSR 10-5.200 Report of Complaints of Abuse [and], Neglect and Misuse of Funds/Property. The department is amending the title, the purpose and sections (1)–(3) and (6)–(12) of this rule.

PURPOSE: This amendment adds provisions for the misuse of funds/property; revises the definitions of class II neglect, physical abuse, sexual abuse, verbal abuse; replaces the phrase "client or resident" with the word "consumer"; adds definition of the word consumer; changes the reporting requirements to law enforcement; changes all meeting and appeal dates to be consistent from calendar to working days; changes the title of hearing officer to hearings administrator; changes the reference of the Division of Aging to the Division of Senior Services; changes the offer of meeting and appeal letters to be sent to the alleged perpetrator and copying provider; instead of sending separate letters to each; clarifies the disqualification regarding verbal abuse and class II neglect; clarifies due process for a charge; adds the reference of the statutory authority for the Disqualification Registry.

PURPOSE: This rule prescribes procedures for reporting and investigating complaints of abuse [and], neglect and misuse of

funds/property in a residential facility, day program or specialized service that is licensed, certified or funded by the [department] Department of Mental Health (department) as required by sections 630.135, 630.168, 630.655 and 630.710, RSMo. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect and misuse of [client] funds/property.

*EMERGENCY STATEMENT: This emergency amendment is necessary to avoid treating department employees in a way that is unfairly different than the treatment afforded to non-department employees, i.e. employees of agencies licensed or certified by the department. This administrative rule regulates the treatment of employees of agencies licensed or certified by the department who are accused of abuse and neglect. The provisions of this rule, as it currently exists, differ from the provisions of the parallel department operating regulations that address the treatment of those department employees who are charged with abuse and neglect. Such a discrepancy will result in department employees being treated differently than non-department employees and creates the potential for grievance procedures, hearings and/or judicial proceedings. As a result, the Department of Mental Health finds that an emergency amendment is necessary to preserve a compelling governmental interest. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Department of Mental Health believes this emergency amendment is fair to all interested parties under the circumstances. This emergency amendment was filed March 29, 2002, effective May 2, 2002 and expires January 1, 2003.*

(1) The following words and terms, as used in this rule, mean:

(A) Class I neglect, failure of an employee to provide reasonable and necessary services to maintain the physical and mental health of any [client or resident] **consumer** when that failure presents either imminent danger to the health, safety or welfare of a [client or resident] **consumer**, or a substantial probability that death or physical injury would result;

(B) Class II neglect, failure of an employee to provide reasonable or necessary services to a [client or resident] **consumer** according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care. **This includes action or behavior which may cause psychological harm to a consumer due to intimidating, causing fear or otherwise creating undue anxiety;**

(C) **Consumer, individual (client, resident, patient) receiving services from any program or facility contracted, licensed, certified or funded by the department;**

[(C)] (D) Misuse of [client] funds/property, the misappropriation or conversion of a [client's or resident's] **consumer's** funds or property for another person's benefit;

[(D)] (E) Physical abuse—

1. Purposefully beating, striking, wounding or injuring any [client or resident] **consumer**; or

2. In any manner whatsoever mistreating or maltreating a [client or resident] **consumer** in a brutal or inhumane manner. Physical abuse includes handling a [client or resident] **consumer** with any more force than is reasonable [or apparently necessary] for a [client's or resident's] **consumer's** proper control, treatment or management;

[(E)] (F) Sexual abuse, any touching, directly or through clothing, of [the genitals, buttocks or breasts of a client or resident] **a consumer** for sexual purpose or in a sexual manner. [Sexual purpose means for the arousing or gratifying of

anyone's sexual desires. This definition includes—] **This includes but is not limited to:**

1. Kissing;

2. Touching of the genitals, buttocks or breasts;

[1.] **3.** Causing a [resident or client] consumer to touch the employee for sexual purposes;

[2.] **4.** Promoting or observing for sexual purpose any activity or performance involving [clients or residents] consumers including any play, motion picture, photography, dance, or other visual or written representation; or

[3.] **5.** Failing to **intervene or attempt to stop** or prevent inappropriate sexual activity or performance between [clients or residents] consumers; and

[F] **(G)** Verbal abuse, [referring to a client or resident in the client's or resident's presence with] **using profanity or speaking** in a demeaning, nontherapeutic, undignified, threatening or derogatory manner **in a consumer's presence.**

(2) This section applies to any employee[, resident or client] or consumer of any residential facility, day program or specialized service, as defined under section 630.005, RSMo. Facilities, programs and services that are operated by the [Department of Mental Health] **department** are regulated by the department's operating regulations and are not included in this definition.

(A) Any such employee who has reasonable cause to believe that a [resident or client] consumer has been subjected to physical abuse, sexual abuse, **misuse of funds/property**, [C]class I neglect, [C]class II neglect or verbal abuse while under the care of a residential facility, day program or specialized service that is licensed, certified or funded by the department shall immediately make a verbal or written complaint.

(C) The head of the facility, day program or specialized service shall forward the complaint to—

1. The Division of Family Services if the alleged victim is under the age of eighteen (18); or

2. The Division of [Aging] **Senior Services** if the alleged victim is a resident or client of a facility licensed by the Division of [Aging] **Senior Services** or receiving services from an entity under contract with the Division of [Aging] **Senior Services.**

(3) The head of the facility, day program or specialized service that is licensed, certified or funded by the department shall immediately report to the local law enforcement official any alleged or suspected—

(A) Sexual abuse; or

(B) [Abuse or neglect which results in physical injury.] **Abuse, neglect or misuse of funds/property which may result in a criminal charge.**

(6) Within ten (10) [calendar] **working** days of receiving the final report from the board of inquiry, local investigator or central investigative unit, the head of the supervising facility or department designee shall send to the [provider and] alleged perpetrator a summary of the allegations and findings which are the basis for the alleged abuse/neglect/**misuse of funds or property; the provider will be copied.** The summary shall comply with the constraints regarding confidentiality contained in section 630.167, RSMo and shall be sent by **regular and certified** mail.

(A) The [provider and/or] alleged perpetrator may meet with the head of the supervising facility or department designee, submit comments or present evidence; **the provider may be present and present comments or evidence in support of the alleged perpetrator.** If the [provider or] alleged perpetrator wishes to have this meeting, s/he must notify the head of the supervising facility or department designee within ten (10) [calendar] **working** days of receiving the summary.

(B) This meeting shall take place within ten (10) [calendar] **working** days of notification, unless the parties mutually agree upon an extension.

(C) Within ten (10) [calendar] **working** days of the meeting, or **if no request for a meeting is received within ten (10) working days of the alleged perpetrator's receipt of the summary**, the head of the supervising facility or department designee shall [sustain or deny the allegations] **make a final determination** as to whether abuse/neglect/**misuse of funds or property** took place. The [provider and] perpetrator shall be notified of this decision by **regular and certified** mail; **the provider will be copied.**

(D) The letter shall advise the [provider and] perpetrator that they have ten (10) [calendar] **working** days **following receipt of the letter** to contact the department's [hearing officer] **hearings administrator** if they wish to appeal a finding of abuse, [or] neglect or **misuse of funds/property.**

(F) The department's effort to notify the alleged perpetrator at his/her last known address by regular and certified mail shall serve as proper notice. The alleged perpetrator's refusal to receive certified mail does not limit the department's ability to make a final determination.

(7) If an appeal is requested, the [hearing officer] **hearings administrator** shall schedule the hearing to take place within thirty (30) [calendar] **working** days of the request, but may delay the hearing for good cause shown. At the hearing, the head of the supervising facility or designee, or other department designee shall present evidence supporting its findings of abuse, neglect, **misuse of funds/property**, or [both] **all.** The provider or perpetrator may submit comments or present evidence to show why the decision of the head of the supervising facility or department designee should be modified or overruled. The [hearing officer] **hearings administrator** may obtain additional information from department employees as s/he deems necessary.

(8) The decision of the [hearing officer] **hearings administrator** shall be the final decision of the department. The [hearing officer] **hearings administrator** shall notify the [provider,] perpetrator, and the head of the supervising facility or department designee by certified mail of the decision within fourteen (14) [calendar] **working** days of the appeal hearing; **the provider will be copied.**

(9) The opportunities described in sections (6), (7) and (8) of this rule regarding a meeting with the head of the supervising facility and an appeal before the department's [hearing officer] **hearings administrator** apply also to providers and alleged perpetrators in an investigation of misuse of [client] funds/property.

(10) An [provider or] alleged perpetrator does not forfeit his/her right to an appeal with the department's [hearing officer] **hearings administrator** when s/he declines to meet with the head of the supervising facility under subsections (6)(A) and (B) of this rule.

(11) If the department substantiates that a person has perpetrated physical abuse, sexual abuse, [C]class I neglect, or [conversion of client's property and/or funds for his/her own use or the facility's use] **misuse of funds/property**, the perpetrator shall not be **employed by the department, nor** be licensed, employed [n]or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department. **The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo.**

(12) If the department substantiates that a person has perpetrated [verbal abuse or Class II neglect two (2) or more times in]

two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within a twelve (12)-month period, the perpetrator shall not be employed by the department, nor be licensed, employed[,] or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department. The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo.

AUTHORITY: sections 630.050, 630.165, 630.167, 630.168 [and RSMo Supp. 1997 and] 630.135, 630.655 and 630.705, RSMo [1994] 2000 and 630.170, RSMo Supp. 2001. Original rule filed Oct. 29, 1998, effective May 30, 1999. Emergency amendment filed March 29, 2002, effective May 2, 2002, expires Jan. 1, 2003. A proposed amendment covering this same material is published in this issue of the Missouri Register.